

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2088 OF 2007

M/s.V.K. Patel & Co. (Exports)..Petitioners

Vs.

Union of India & Ors.

.....Respondents

Mr. Sujay Kantawala with Mr. Vinod Kothari i/b. Apex Law
Partner for the Petitioners.

Mr. A.S.Rao with Mr. Rui A. Rodrigues and Mr. H.P.
Chaturvedi, for the Respondents.

**CORAM : F.I. REBELLO &
R.S. MOHITE, JJ.
DATED : 6TH DECEMBER 2007**

P.C.

. Rule. Heard forthwith. It is the case of the petitioners that they are aggrieved with the order dated 6th May, 2005 whereby a penalty has been imposed on them for not fulfilling the export conditions in respect of the goods which were imported. It is their contention that in respect of shipping Bill No.525938 dated 16th October, 1991 the original was produced as also the relevant bank realisation certificate whereby they have exported 28.699 metric tonnes. However, while giving file Number it was indicated as No.03/85/040/00348AM92. It is submitted that the correct file Number would be No.03/85/040/00349AM92. Our attention is invited to paragraph 8 of the reply filed on behalf of the Revenue wherein the facts are set out and further it is set out that the file was not considered as it was different and not relevant.

2. In our opinion the order has resulted in failure of justice in so far as the petitioner is concerned. The imposition of penalty is on the ground that the petitioner had not re-exported the goods as required. If the shipping bill for 28,699 metric tonnes is considered then the petitioner would have partly complied with his export obligations. Similarly the export in respect of 18,008 metric tonnes has not been considered for similar reasons. For the reasons earlier set out the Respondent No.4 is directed to also consider the export in respect of 18,008 metric tonnes. If these two bills of re-export were allowed prima facie no penalty could have been imposed. Considering the above in our opinion the impugned order has resulted in failure of justice the impugned order is set aside and the matter is remanded back to the Respondent No.4 to reconsider the matter according to law after considering the file No.03/85/040/00349AM92.

. Considering the ends of justice order dated August 6, 2007 is also quashed and set aside and the matter is remanded to Respondent NO.4 for reconsideration according to law.

, Respondent No.4 to give an opportunity of being heard to the petitioner before passing the final order. Rule made absolute accordingly. No order as to costs.

(R.S.MOHITE, J.)

(F.I. REBELLO, J)